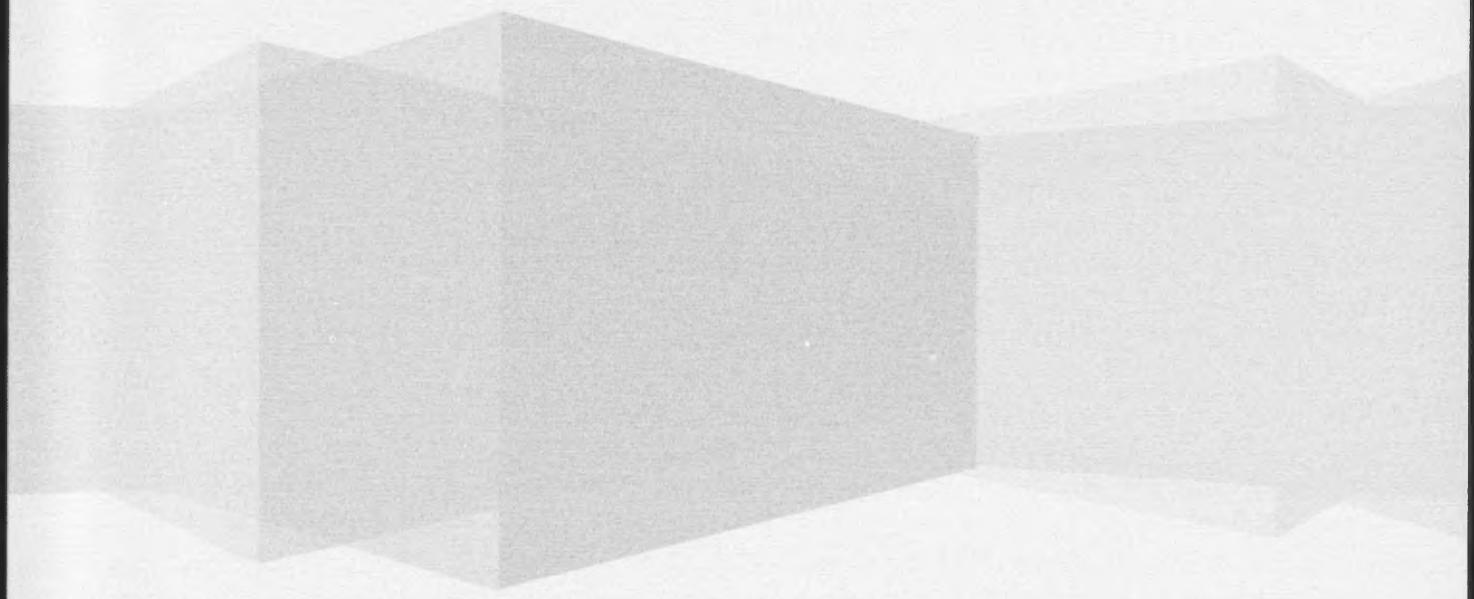
BRITISH COLUMBIA

Financial Services Tribunal
2012-2013 Annual Report



BRITISH COLUMBIA

Financial Services Tribunal

April 19, 2013

The Honourable Michael de Jong
Minister of Finance
Room 153, Parliament Buildings
Victoria BC V8V 1X4

Dear Minister de Jong:

Re: Financial Services Tribunal 2012-2013 Annual Report

I am pleased to submit to you the Annual Report of the Financial Services Tribunal ("FST") for the fiscal year beginning April 1, 2012 and ending March 31, 2013. This report is submitted pursuant to section 242.1 (5) (d) of the *Financial Institutions Act*.

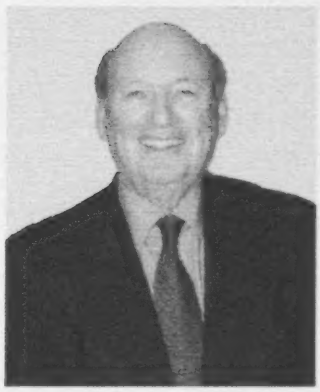
Sincerely,

M. Mourton

Maurice R. Mourton
Chair
Financial Services Tribunal

Enclosure

Message from the Chair



Again this year the volume of cases for decision by our Tribunal was small. Nevertheless we do provide an important outlet for individuals that are unhappy with decisions made by the bodies for which we have a responsibility, and thus are able to appeal to the Financial Services Tribunal for potential redress.

The Tribunal is now fully appointed with three members and is capable of a satisfactory level of response to appeals.

I would be pleased to answer any questions the reader of this report may have.

M. Mourton

Maurice R. Mourton
Chair

Mandate

The Financial Services Tribunal (FST) hears appeals from institutions and individuals who want to contest enforcement decisions made by the:

- Insurance Council of British Columbia;
- Real Estate Council of British Columbia;
- Superintendent of Real Estate;
- Superintendent of Pensions;
- Registrar of Mortgage Brokers; and,
- Superintendent of Financial Institutions.

The FST has jurisdiction to hear appeals under the following British Columbia statutes:

- *Financial Institutions Act;*
- *Credit Union Incorporation Act;*
- *Mortgage Brokers Act;*
- *Pension Benefits Standards Act;*
- *Real Estate Services Act; and,*
- *Real Estate Development Marketing Act.*

Tribunal Membership

At the start of this reporting period the FST board membership consisted of:

TRIBUNAL MEMBER	ROLE	TERM EXPIRY
Maurice M. Mourton	Chair	November 23, 2013
Paula Barnsley	Member	November 23, 2014
Patrick Lewis	Member	May 2, 2014

BIOGRAPHIES FOR THE TRIBUNAL MEMBERSHIP AT THE END OF THE REPORTING PERIOD ARE AS FOLLOWS:

MAURICE M. MOURTON, CHAIR

Mr. Mourton has over 45 years experience in the banking industry and held a variety of senior executive positions. He was head of Human Resources for the Bank of Montreal and subsequently held senior positions in Quebec, Ontario, the U.K., and British Columbia. Joining the HSBC Group in 1986, he served in a variety of senior executive positions including being a member of the Executive Committee. He retired from the HSBC Group in 2000 as Executive Director Brasil. From 2004 to 2007 he served as Chair of the Ubiquity Bank of Canada.

Always active in the community, Mr. Mourton has served on numerous boards. He has chaired the Children's Miracle Network Telethon, the Children and Women's Health Center of BC, the Canadian International Dragon Boat Festival, the Canadian Bankers Association of BC, the Canadian Genetic Diseases Network (a National Center of Excellence), the Arthritis Society of BC, the BC Transplant Society and the Child and Family Research Institute. In addition he has been a director of the International Finance Center, Endeavor, the Vancouver Opera, the BC Children's Hospital Foundation, the Vancouver Foundation, the College of Physicians and Surgeons of BC and Community Living B.C. Currently he is a director of the Northern Trust Company, and a member of the Health Professions Review Board. He is a Governor of B.C. Children's Hospital Foundation.

PAULA E. BARNSLEY, MEMBER

Paula Barnsley retired from full time private practice of law in July 2006 and continued her association with Cundari Seibel Law Corporation in Kamloops on a part time basis until retiring to Vancouver Island in 2011. She has been a part time member of various adjudicative tribunals since moving to Kamloops in 1998 and maintains a keen interest in administrative law, which started when she clerked for the Supreme Court of Nova Scotia – Trial Division. Ms. Barnsley holds a Bachelor of Laws from Dalhousie University, and a Master of Laws from UBC. Her graduate work focussed on equality in tax policy. She has been called to the Bar in Nova Scotia, New Brunswick and British Columbia. She also holds a Masters of Education (Educational Psychology) from Memorial University in Newfoundland, and worked in private practice as a registered psychologist for 14 years before entering law school in 1988.

PATRICK F. LEWIS, MEMBER

Patrick Lewis is a Partner at the boutique litigation firm, Sugden, McFee & Roos LLP, in Vancouver, practicing exclusively in the area of civil litigation with an emphasis on commercial disputes. He was admitted as a barrister and solicitor to the Bar of the Province of British Columbia on June 14, 1985. The cases Mr. Lewis handles include securities litigation, mining disputes, professional liability claims and defence thereof involving lawyers, doctors, engineers and accountants, corporate litigation, insurance litigation, real property disputes, defamation claims, banking litigation, employment disputes and personal injury actions.

Mr. Lewis has appeared in all levels of courts in British Columbia, the Federal Court of Canada and been involved in opposing applications for leave to appeal to the Supreme Court of Canada in a number of cases. As of August 30, 2010, Mr. Lewis has been a member of the Financial Services Tribunal and in that capacity adjudicates appeals from the decisions of statutory regulatory agencies in British Columbia. Mr. Lewis is a member of the B.C. Branch of the Canadian Bar Association, Civil Litigation Subsection. He is also a member of the Trial Lawyers Association of British Columbia, a guest lecturer for the Continuing Legal Education Society of British Columbia and a Moot Court Judge at the U.B.C. Law School.

Tribunal Member Training

In order to ensure that the FST is able to provide quality adjudicative services, keep up to date with new innovations in administrative justice and optimally fulfill its mandate, the tribunal engaged in a number of professional development activities during the current reporting period.

On October 15, 2012 the FST held a General Meeting of the membership, legal counsel and staff to discuss general tribunal business and consider substantive issues including:

- Standard of Review the FST applies on appeal of a regulatory decision
- FST cases heard by the Court
- Lessons learned and issued raised from recent FST decisions
- Best practices in decision writing
- Review and Revision of the FST Practice Guidelines

The Chair and members also took advantage of the annual Education Conference provided by the BC Council of Administrative Tribunals in October 2012, which provided workshops on topical administrative law issues such as mediation and early dispute resolution, hearing skills development, decision writing, and recent developments in administrative law.

Operations

Effective April 1, 2010, the administrative support functions of the FST were moved from the Financial Institutions Commission (FICOM) in Vancouver and consolidated with the Environmental Appeal Board/Forest Appeals Commission Appeals Office (Appeals Office) in Victoria.

In addition to the FST, the Appeals Office provides administrative support to five other adjudicative tribunals. This has been done to assist government in achieving economic and program delivery efficiencies by allowing greater access to resources while, at the same time, reducing administration and operating costs. The additional tribunals include the:

- Community Care and Assisted Living Appeal Board;
- Health Professions Review Board;
- Hospital Appeal Board;
- Industry Training Appeal Board; and,
- Oil and Gas Appeal Tribunal.

This move has resulted in significant savings to government for the operation of the FST through a shared services cluster approach which takes advantage of synergy and assists government in achieving economic and program delivery efficiencies.

This arrangement has been in operation for 3 years now and has proven to be an effective and efficient means for providing administrative support to the tribunal which in turn enables the FST to effectively and efficiently fulfill its mandate to the public.

Contact Information

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Appeal Activity and Decisions Issued

Appeals Filed

There were three new appeals filed with the FST between April 1, 2012 and March 31, 2013. Two of the appeals were contesting decisions made under the *Financial Institutions Act* (FIA) and the other was an appeal from a decision under the *Real Estate Services Act* (RSA). One FIA matter was determined on a preliminary application for an extension of time to file an appeal (denied); two matters proceeded to written hearings and were disposed of within the reporting period. Written decisions were issued in each of the three appeals, as set out below.

Decisions Issued

2012-FIA-001(a)

Decision Date:	August 31, 2012
Appellant:	SSEI Insurance Agency Ltd
Respondents:	Insurance Council of British Columbia Financial Institutions Commission
Act:	*Financial Institutions Act*, R.S.B.C. 1996, c. 141
Issue:	Application for an Extension of Time to File an Appeal
Disposition:	The application to extent the time to file was denied and the appeal refused for being out of time
Appeal Decision:	http://www.fst.gov.bc.ca/pdf/2012-FIA-001(a).pdf

This preliminary issue was heard by way of written submissions. The Chair determined that there were no special circumstances that warranted granting the request for an extension of time to file an Appeal and that to do so in the circumstances of this case in the face of the evidence demonstrating the Appellant's disregard for the Council's regulatory process would render the statutory timelines meaningless.

2012-RSA-001(a)

Decision Date:	October 22, 2012
Appellant:	Chinweobi (Chiobi) Anoliefoh
Respondent:	Real Estate Council of British Columbia
Act:	*Real Estate Services Act*, R.S.B.C. 1996, c. 42
Issue:	Whether the Appellant met the requirements to be licensed as a managing broker and if so, whether it was necessary to impose conditions and restrictions on the licence.
Disposition:	Appeal allowed in part. The Commission's decision was varied by reducing the period of ineligibility for a managing broker's licence.
Appeal Decision:	http://www.fst.gov.bc.ca/pdf/2012-RSA-001(a).pdf

The Appellant resigned his position as a managing broker and surrendered his licence, with the intention of applying for re-instatement when he found work with another brokerage. In February 2012, the Appellant applied to the Commission for re-instatement of his licence.

The Qualification Committee of the Commission decided that the Appellant was not currently suitable to be licensed as a managing broker because, as managing broker, he'd had little control over operations at the prior brokerage where he had been employed, resulting in public harm. The Committee concluded that the Appellant was immediately eligible to be licensed as an associate broker in the categories of services for which he had been previously licensed and experienced, namely trading services and rental property management services. The Appellant's application for licensing in the category of strata management services was denied because the Committee found no evidence of previous licensing in this category. The Qualification Committee also placed conditions on the Appellant's ability to apply for managing broker licensing in the future. The Committee ordered the Commission to reject any application by the Appellant for a managing broker licence before three years from the date of the decision. Further, the Committee imposed an education requirement on the Appellant.

The appeal was heard by way of written submissions. The member hearing the matter allowed the appeal in part and varied the Committee's decision by reducing the period of ineligibility to apply for a managing broker's licence from three years to one year from the date of the appeal decision.

2012-FIA-002(a)

Decision Date:	December 7, 2012
Appellant:	Mohamed Alie Jalloh
Respondents:	Insurance Council of BC Financial Institutions Commission
Act:	*Financial Institutions Act*, R.S.B.C. 1996, c. 141
Issue:	Cancellation of a general insurance licence for a period of 4 years and assessment of investigation and hearing costs
Disposition:	The Decision of the Insurance Council was confirmed, except for a variation of the order from being a cancellation of the licence to a suspension.
Appeal Decision:	http://www.fst.gov.bc.ca/pdf/2012-FIA-002(a).pdf

This was an appeal of an Order of the Insurance Council of British Columbia by which a licensee's general insurance licence was "cancelled for four years" and he was ordered to pay investigation and hearing costs.

The Hearing Committee found that the Appellant accessed the ICBC database and in particular, personal information, without consent and for reasons other than to conduct an insurance transaction. The misconduct in the case was serious. The Hearing Committee noted the following aggravating factors: the Appellant wrongfully accessed the ICBC database on three occasions over a period of three months; the private information he accessed concerned a former girlfriend while a criminal charge against the Appellant in relation to his behaviour toward her was pending; all of that occurred when an Undertaking had been given to a peace officer to refrain from any kind of contact with her; and the Appellant was lacking in remorse.

The appeal was heard by way of written submissions. After the parties' initial submissions the member hearing the appeal requested further submissions on the narrow question of the meaning of the four year "cancellation" of the Appellant's licence, as ordered by Council.

The member concluded that it was not reasonable to order cancellation in this case and that a suspension should be substituted because a licence cancellation for four years appeared inconsistent with section 231 of the FIA; the meaning of a licence cancellation for four years was unclear; and an Order for suspension would be much clearer in its articulation and implementation than the Order made. Accordingly the cancellation term of the Order was varied but the four year period was determined reasonable and was confirmed.

Matters Outstanding at end of Period

There were no matters outstanding at the end of this reporting period.

Judicial Review of FST Decisions

There were no decisions rendered by the Supreme Court of British Columbia on judicial review of any FST decisions issued in this reporting period.

Statement of Financial Performance

(For the fiscal year ended March 31, 2013)

In fiscal year 2012/2013, the FST received $2,550 in recoveries from appeal filing fees and incurred expenses of $23,826 as detailed below in this five year chart. This year's total expenses are considerably lower than last year when the FST appeared, via legal counsel, on two separate judicial review hearings to make submissions on important issues being considered by the court.

Operating Result	***2008/2009*** ***$***	***2009/2010*** ***$***	***2010/2011*** ***$***	***2011/2012*** ***$***	***2012/2013*** ***$***
Recoveries	2,550	0	1,700	850	2,550
Expenses	(93,902)	(58,698)	(29,371)	(71,202)	(23,826)
Net	(91,352)	(58,698)	(27,671)	(70,352)	(21,276)
Direct Expenses	***2008/2009*** ***$***	***2009/2010*** ***$***	***2010/2011*** ***$***	***2011/2012*** ***$***	***2012/2013*** ***$***
Salaries and Benefits	45,026	(421)	0	0	0
Professional Services	6,266	1,240	11,130	61,722	6,690
Board Fees & Expenses	6,949	19,025	18,241	9,300	16,607
Other	273	283	0	180	529
Total direct Expenses	58,514	20,127	29,371	71,202	23,826
Allocated Overhead -FICOM	35,388	38,571	n/a	n/a	n/a
Total FST Expenses	**$ 93,902**	**$ 58,698**	**$ 29,371**	**$71,202**	**$23,826**